

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2598 OF 2005
WITH
WRIT PETITION NO.296 OF 2006

Rowena Lewis	..Petitioner.
Vs.	
Cimmco Birla Ltd. (Cimmco Ltd.) & Ors.	..Respondents.

...

Mr. Santosh Shetty for the Petitioner.
Mr. V.P. Vaidya for the Respondents.

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CORAM: DR. D.Y. CHANDRACHUD, J.

5th October, 2006.

P.C. :

1. The Petitioner was appointed as a Secretary- cum- Stenographer by the Respondent on 1st September, 1976. Her services were terminated on 30th December, 1987. The Petitioner instituted a complaint of unfair labour practices being complaint (ULP) 339 of 1987 under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Labour Court in order to challenge the termination. On 25th March, 1996 the Labour Court allowed the complaint and passed an order of reinstatement with backwages. The revision

application of the employer (Revision Application 72 of 1996) was dismissed by the Industrial Court. Thereupon the Petitioner filed another complaint being complaint (ULP) 588 of 1996 under Item 9 of Schedule IV for implementation of the order of the Labour Court as confirmed by the Industrial Court. On 5th November, 1996 an interim order was passed by the Industrial Court directing the employer to deposit the wages that were in arrears within a period of one month.

2. The employer filed two writ petitions before this Court viz. Writ Petition 6060 of 1996 and 6064 of 1996. The writ petitions sought to impugn the order passed by the Labour Court in complaint (ULP) 339 of 1987 and the interim order of the Industrial Court dated 5th November, 1996 in complaint (ULP) 588 of 1996. Both the writ petitions were admitted by a Learned Single Judge of this Court on 12th December, 1996. The order of the Labour Court in complaint (ULP) 339 of 1987 as confirmed in revision was stayed subject to the following conditions :

“(i) the petitioner pays Respondent No.1 the wages last drawn by her at the time of her retrenchment every month from the month of December 96, first such payment shall be made on or before 7th January, 1997, and on 7th of every subsequent month;

(ii) the petitioner deposits before this Court the entire backwages payable under the impugned orders within one month from today. Upon such deposit being made by the Petitioner before this court, the Registrar, Appellate Side shall invest the said amount in the fixed deposit of any nationalized Bank for a period of two years and further renewable for one year thereafter, if necessary."

3. On 3rd May, 2000 a precipe was filed by the advocate appearing on behalf of the Petitioner before the Industrial Court in complaint (ULP) 588 of 1996. The precipe recorded that the complaint had been filed for non-implementation of the order of the Labour Court. However, in the meantime the employer had challenged the order in this Court and while admitting the Petition there was a direction to the employer to deposit the backwages and to pay wages under Section 17-B of the Industrial Disputes Act, 1947. The advocate who filed the precipe stated that in view of the aforesaid development no purpose would be served by prosecuting the complaint and the complaint may accordingly be disposed of as not pressed. The precipe was only signed by the advocate. On 3rd May, 2000 the Industrial Court disposed of the complaint as not pressed in view of the precipe.

4. On 6th October, 2000 the Petitioner moved an application for restoration of the complaint. The contention of the Petitioner was that before withdrawing the complaint the advocate had not either consulted her nor had he obtained her consent. The application was dismissed by an order dated 2nd December, 2004 which is impugned in writ Petition 2598 of 2005. On 26th July, 2005 the Industrial Court passed another order in complaint (ULP) 588 of 1996 dismissing the complaint. That order has been challenged in Writ Petition 296 of 2006.

5. The narration of facts in the earlier part of this order would reveal that the workman had been ordered to be reinstated with backwages by the Labour Court on 25th March, 1996 in complaint (ULP) 339 of 1987. The order of the Labour Court was confirmed in revision by the Industrial Court. The second complaint that was instituted by the workman complaint (ULP) 588 of 1996 was in view of the grievance of the workman that the earlier order of the Labour Court was not being implemented. The non-implementation of the order of the Labour Court formed the foundation of the second complaint which was a complaint under item 9 of Schedule IV. In the meantime, the employer had moved

this Court in writ proceedings to challenge the order of the Labour Court granting reinstatement as well as the interim order of the Industrial Court in the subsequent complaint requiring the deposit of backwages. By the interim order of this Court the employer was directed to pay the last drawn wages to the workman from month to month commencing from 7th January, 1996 and to deposit the entire backwages payable before this Court. It was in view of the pendency of the writ proceedings before this Court that the advocate appearing on behalf of the Petitioner moved a precipe stating that the complaint was not required to be prosecuted any further. Whether or not the advocate had authority to do so is a subsidiary issue and for the purposes of the present proceedings the Court may proceed on the basis that the implied authority of the advocate did extend to the filing of the precipe. However, it is now common ground that the writ proceedings filed by the employer came to be dismissed in default by this Court on 2nd April, 2004. Upon dismissal of the writ proceedings, albeit in default, the order of the Labour Court granting reinstatement with backwages attained finality. The grievance of the workman was that despite the order of the Labour Court, the employer was not implementing the order. The application for restoration of the second complaint

was undoubtedly filed on 6th October, 2000 which was prior to the dismissal of the writ petition of the employer in default by this Court. Be that as it may, at the time when the application for restoration came up, the Petitions filed by the employer had been dismissed. That being the position, there was no reason as to why the workman should have been denied relief of restoration of the second complaint. The grievance of the workman in the second complaint is that the employer is not implementing the order of the Labour Court and is therefore in breach of Item 9 of Schedule IV. This grievance would survive. Even if the complaint was withdrawn earlier in view of the interim order passed by this Court during the pendency of the writ petition, another complaint complaining of the non-implementation of the earlier order of the Labour Court would have been maintainable once the writ proceedings were dismissed by this Court. There is no reason why the workman should be put to a delay and expense of filing a second complaint seeking the enforcement of the order of the Labour Court.

6. In these circumstances, I am of the view that the workman is entitled to succeed in these proceedings. The impugned orders dated 2nd December, 2004 and 26th July, 2005 are

quashed and set aside. Complaint (ULP) 588 of 1996 is restored to the file of the Industrial Court for disposal in accordance with law. The Industrial Court shall endeavour to dispose of the complaint expeditiously and within a period of six months from the date on which a certified copy of this order is produced before the Court. Rule is made absolute in these terms. There shall be no order as to costs.